

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1046

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO WASTE; PROVIDING REQUIREMENTS FOR PERMIT
APPLICATIONS FOR LARGE AND SMALL SOLID WASTE FACILITIES;
ESTABLISHING NOTICE AND HEARING REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-9-3 NMSA 1978 (being Laws 1990,
Chapter 99, Section 3) is amended to read:

"74-9-3. DEFINITIONS.--As used in the Solid Waste Act:

A. "agricultural" means all methods of production
and management of livestock, crops, vegetation and soil. This
includes, but is not limited to, raising, harvesting and
marketing. It also includes, but is not limited to, the
activities of feeding, housing and maintaining animals such as
cattle, dairy cows, sheep, goats, hogs, horses and poultry;

B. "board" means the environmental improvement

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underscored material = new
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1 board;

2 C. "commercial hauler" means any person
3 transporting solid waste for hire [~~by whatever means for the~~
4 ~~purpose of disposing of the solid waste in a solid waste~~
5 ~~facility~~], except that the term does not include an individual
6 transporting solid waste generated on or from his residential
7 premises for the purpose of disposing of it in a solid waste
8 facility;

9 D. "construction and demolition debris" means
10 materials generally considered to be not water soluble and
11 nonhazardous in nature, including, but not limited to, steel,
12 glass, brick, concrete, asphalt roofing materials, pipe, gypsum
13 wallboard and lumber from the construction or destruction of a
14 structure as part of a construction or demolition project, and
15 includes rocks, soil, tree remains, trees and other vegetative
16 matter that normally results from land clearing or land
17 development operations for a construction project, but if
18 construction and demolition debris is mixed with any other
19 types of solid waste, whether or not originating from the
20 construction project, it loses its classification as
21 construction and demolition debris;

22 E. "densified-refuse-derived fuel" means a product
23 resulting from the processing of mixed municipal solid waste in
24 a manner that produces a fuel in pellet form suitable for
25 combustion in existing or new solid-fuel-fired boilers;

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1 F. "director" means the ~~[director of the~~
2 ~~environmental improvement division of the health and~~
3 ~~environment department]~~ secretary of environment;

4 G. "dispose" or "disposal" means causing, allowing
5 or maintaining the abandonment, discharge, deposit, placement,
6 injection, dumping, spilling or leaking of any solid waste into
7 or on any land or water;

8 ~~[G.]~~ H. "division" means the [environmental
9 ~~improvement division of the health and environment]~~ department
10 of environment;

11 I. "large solid waste facility" means a solid waste
12 facility that is not a small solid waste facility;

13 ~~[H.]~~ J. "municipality" means any incorporated city,
14 town or village, whether incorporated under general act,
15 special act or special charter, incorporated counties and H
16 class counties;

17 K. "permit" means an authorization to own, operate,
18 construct or close a solid waste facility and may be in the
19 form of:

20 (1) a permit for a large solid waste facility,
21 including any operating landfill;

22 (2) a registration for a small solid waste
23 facility; or

24 (3) a closure and post-closure plan for a
25 landfill that is no longer accepting solid waste and will close

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1 rather than continue to operate;

2 [~~F.~~] L. "person" means an individual or any entity,
3 including federal, state and local governmental entities,
4 however organized;

5 [~~J.~~] M. "plan" or "state plan" means the solid
6 waste management plan required to be developed under Section [~~4~~
7 ~~of the Solid Waste Act~~] 74-9-4 NMSA 1978;

8 [~~K.~~] N. "program" or "state program" means the
9 comprehensive solid waste management program described in
10 Section [~~12 of the Solid Waste Act~~] 74-9-12 NMSA 1978;

11 [~~L.~~] O. "recyclable materials" means materials that
12 would otherwise become solid waste if not recycled and that can
13 be collected, separated or processed and placed in use in the
14 form of raw materials or products; or densified-refuse-derived
15 fuels;

16 [~~M.~~] P. "recycling" means any process by which
17 recyclable materials are collected, separated or processed and
18 reused or returned to use in the form of raw materials or
19 products;

20 Q. "small solid waste facility" means:

21 (1) an animal crematorium that is a multi-
22 chambered unit with a total charging capacity of less than five
23 tons per day and is designed for the purpose of cremating dead
24 animals and animal parts;

25 (2) a composting facility that occupies less

1 than five acres and has a design capacity of twenty-five tons
 2 or less per day on a dry weight basis and that only utilizes
 3 less than five dry tons per day of sewage sludge, yard refuse
 4 or other types of feedstock;

5 (3) a recycling facility that has a design
 6 capacity of twenty-five tons or less per day;

7 (4) a transfer station with a total
 8 operational rate of one hundred twenty cubic yards or less per
 9 day of solid waste, which does not include separated recyclable
 10 material; or

11 (5) an incineration facility used for burning
 12 yard refuse that operates by forcefully projecting a curtain of
 13 air across an open chamber or pit in which combustion occurs,
 14 controls emission of the combustion products and is not
 15 designed to process more than ten tons of yard refuse per hour;

16 ~~[N.]~~ R. "solid waste" means any garbage, refuse,
 17 sludge from a waste treatment plant, water supply treatment
 18 plant or air pollution control facility and other discarded
 19 material, including solid, liquid, semisolid or contained
 20 gaseous material resulting from industrial, commercial, mining
 21 and agricultural operations and from community activities.

22 "Solid waste" does not include:

23 (1) drilling fluids, produced waters and other
 24 non-domestic wastes associated with the exploration,
 25 development or production, transportation, storage, treatment

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1 or refinement of crude oil, natural gas, carbon dioxide gas or
2 geothermal energy;

3 (2) fly ash waste, bottom ash waste, slag
4 waste and flue gas emission control waste generated primarily
5 from the combustion of coal or other fossil fuels and wastes
6 produced in conjunction with the combustion of fossil fuels
7 that are necessarily associated with the production of energy
8 and that traditionally have been and actually are mixed with
9 and are disposed of or treated at the same time with fly ash,
10 bottom ash, boiler slag or flue gas emission control wastes
11 from coal combustion;

12 (3) waste from the extraction, beneficiation
13 and processing of ores and minerals, including phosphate rock
14 and overburden from the mining of uranium ore, coal, copper,
15 molybdenum and other ores and minerals;

16 (4) agricultural waste, including, but not
17 limited to, manures and crop residues returned to the soil as
18 fertilizer or soil conditioner;

19 (5) cement kiln dust waste;

20 (6) sand and gravel;

21 (7) solid or dissolved material in domestic
22 sewage or solid or dissolved materials in irrigation return
23 flows or industrial discharges that are point sources subject
24 to permits under Section 402 of the Federal Water Pollution
25 Control Act, 33 U.S.C. Section 1342 or source, special nuclear

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1 or by-product material as defined by the Atomic Energy Act of
2 1954, 42 U.S.C. Section 2011 et seq.;

3 (8) densified-refuse-derived fuel; or

4 (9) any material regulated by Subtitle C of
5 the federal Resource Conservation and Recovery Act of 1976,
6 substances regulated by the Federal Toxic Substances Control
7 Act or low-level radioactive waste;

8 [~~θ.~~] S. "solid waste district" means a geographical
9 area designated by the board as a solid waste district under
10 Section [~~11 of the Solid Waste Act~~] 74-9-11 NMSA 1978;

11 [~~P.~~] T. "solid waste facility" means any public or
12 private system, facility, location, improvements on the land,
13 structures or other appurtenances or methods used for
14 processing, transformation, recycling or disposal of solid
15 waste, including landfill disposal facilities, transfer
16 stations, resource recovery facilities, incinerators and other
17 similar facilities not specified, but does not include
18 equipment specifically approved by order of the director to
19 render medical waste noninfectious or a facility which is
20 permitted pursuant to the provisions of the Hazardous Waste
21 Act; and does not apply to a facility fueled by a densified-
22 refuse-derived fuel that accepts no other solid waste;

23 [~~Q.~~] U. "source reduction" means any action that
24 causes a net reduction in the generation, volume or toxicity of
25 solid waste;

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1 ~~[R.]~~ V. "special waste" means solid waste that has
2 unique handling, transportation or disposal requirements to
3 assure protection of the environment and the public health and
4 safety;

5 W. "transfer station" means a facility used to
6 receive and temporarily store solid wastes or to transfer solid
7 wastes directly from smaller to larger vehicles for transport
8 to a solid waste facility. "Transfer station" does not include
9 the operations premises of a duly licensed commercial hauler
10 who receives, temporarily stores or transfers solid waste in
11 accordance with regulations adopted by the board;

12 ~~[S.]~~ X. "transformation" means incineration,
13 pyrolysis, distillation, gasification or biological conversion
14 other than composting; and

15 ~~[T.]~~ Y. "yard refuse" means vegetative matter
16 resulting from landscaping, land maintenance and land clearing
17 operations."

18 Section 2. Section 74-9-21 NMSA 1978 (being Laws 1990,
19 Chapter 99, Section 21) is amended to read:

20 "74-9-21. PERMIT APPLICANT DISCLOSURE--LARGE SOLID WASTE
21 FACILITY.--

22 A. Every applicant for a permit for a large solid
23 waste facility shall file a disclosure statement with the
24 information required by and on a form developed by the division
25 in cooperation with the department of public safety at the same

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1 time he files his application for a permit with the director.

2 B. Upon request of the director, the department of
3 public safety shall, within ninety days after receipt of the
4 disclosure statement from an applicant for a permit for a large
5 solid waste facility, prepare and transmit to the director an
6 investigative report on the applicant, based in part upon the
7 disclosure statement, except that this deadline may be extended
8 for a reasonable period of time, for good cause, by the
9 director. In preparing this report, the department of public
10 safety may request and receive criminal history information
11 from the federal bureau of investigation and any other law
12 enforcement agency or organization. The director may also
13 request information under this subsection regarding any person
14 who will be or could reasonably be expected to be involved in
15 management activities of the solid waste facility or any person
16 who has a controlling interest in any permittee. The
17 department of public safety shall provide such confidentiality
18 regarding the information received from a law enforcement
19 agency as may be imposed by that agency as a condition for
20 providing that information to the department.

21 C. All persons required to file a disclosure
22 statement shall provide any assistance or information requested
23 by the director or the department of public safety and shall
24 cooperate in any inquiry or investigation conducted by the
25 department and any inquiry, investigation or hearing conducted

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1 by the director. If, upon issuance of a formal request to
2 answer any inquiry or produce information, evidence or
3 testimony, any person required to file a disclosure statement
4 refuses to comply, the application of an applicant or the
5 permit of a permittee may be denied or revoked by the director.

6 D. If any of the information required to be
7 included in the disclosure statement changes or if any
8 additional information should be added after the filing of the
9 statement, the person required to file it shall provide that
10 information to the director in writing within thirty days after
11 the change or addition. The failure to provide such
12 information within thirty days may constitute the basis for the
13 revocation of or denial of an application for any permit issued
14 or applied for in accordance with Section [~~24 of the Solid~~
15 ~~Waste Act~~] 74-9-24 NMSA 1978, but only if, prior to any such
16 denial or revocation, the director notifies the applicant or
17 permittee of the director's intention to do so and gives the
18 applicant or permittee fourteen days from the date of the
19 notice to explain why the information was not provided within
20 the required thirty-day period. The director shall consider
21 this information when determining whether to revoke or deny the
22 permit.

23 E. No person shall be required to submit the
24 disclosure statement required by this section if the person is
25 a corporation or an officer, director or shareholder of that

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1 corporation and that corporation:

2 (1) has on file and in effect with the federal
3 securities and exchange commission a registration statement
4 required under Section 5, Chapter 38, Title 1 of the Securities
5 Act of 1933, as amended, 15 U.S.C. Section 77e (c);

6 (2) submits to the director with the
7 application for a permit evidence of the registration described
8 in Paragraph (1) of this subsection and a copy of the
9 corporation's most recent annual form 10-K or an equivalent
10 report; and

11 (3) submits to the director on the anniversary
12 of the date of the issuance of any permit it holds under the
13 Solid Waste Act evidence of registration described in Paragraph
14 (1) of this subsection and a copy of the corporation's most
15 recent annual form 10-K or an equivalent report."

16 Section 3. Section 74-9-22 NMSA 1978 (being Laws 1990,
17 Chapter 99, Section 22, as amended) is amended to read:

18 "74-9-22. SOLID WASTE FACILITY PERMIT--NOTICE OF
19 APPLICATION.--Each application filed with the division for a
20 permit [~~under~~] pursuant to the provisions of Section 74-9-20
21 NMSA 1978 shall include documentary proof that the applicant
22 has provided notice of the filing of the application to the
23 public and other affected individuals and entities. The board
24 shall adopt a [~~regulation~~] rule specifying the required content
25 of the notice, including, for small solid waste facilities,

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1 procedures for requesting a hearing. The notice shall be:

2 A. provided by certified mail to the owners of
3 record, as shown by the most recent property tax schedule, of
4 all properties:

5 (1) within one hundred feet of the property on
6 which the facility is located or proposed to be located if the
7 facility is or will be in a class A or H class county or a
8 municipality with a population of more than two thousand five
9 hundred persons; or

10 (2) within one-half mile of the property on
11 which the facility is located or proposed to be located if the
12 facility is or will be in a county or municipality other than
13 those specified in Paragraph (1) of this subsection;

14 B. provided by certified mail to all municipalities
15 and counties in which the facility is or will be located and to
16 the governing body of any county, municipality, Indian tribe or
17 pueblo when the boundary of the territory of the county,
18 municipality, Indian tribe or pueblo is within a ten mile
19 radius of the property on which the facility is proposed to be
20 constructed, operated or closed;

21 C. published once in a newspaper of general
22 circulation in each county in which the property on which the
23 facility is proposed to be constructed, operated or closed is
24 located. This notice shall appear in either the classified or
25 legal advertisements section of the newspaper and at one other

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1 place in the newspaper calculated to give the general public
 2 the most effective notice and, when appropriate, shall be
 3 printed in both English and Spanish; ~~and~~

4 D. posted in at least four publicly accessible and
 5 conspicuous places, including the proposed or existing facility
 6 entrance on the property on which the facility is or is
 7 proposed to be located; and

8 E. provided to residents of each community
 9 significantly affected by the proposed solid waste facility
 10 through at least one other medium and in a manner designed to
 11 reach the maximum number of residents, such as radio,
 12 television or a newsletter distributed to the community."

13 Section 4. Section 74-9-23 NMSA 1978 (being Laws 1990,
 14 Chapter 99, Section 23) is amended to read:

15 "74-9-23. SOLID WASTE FACILITY PERMIT--WHEN APPLICATION
 16 DEEMED COMPLETE--NOTICE OF HEARING.--

17 A. An application for a solid waste facility permit
 18 under the provisions of Section [~~20 of the Solid Waste Act~~]
 19 74-9-20 NMSA 1978 shall be deemed complete when the director
 20 has received all information required under that section and
 21 Section [~~21 of the Solid Waste Act~~] 74-9-21 NMSA 1978. At any
 22 time during the application process that the director
 23 determines that additional information is required from an
 24 applicant or that information furnished is incomplete, he shall
 25 notify the applicant in writing within ten days of the date

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1 that determination is made.

2 B. Within sixty days of the director's
3 determination that a permit application for a large solid waste
4 facility is complete, the director shall set a date, time and
5 location for a hearing on the application and give notice of
6 the hearing date, time and location and a brief description of
7 the application in the same manner as required in Section [22
8 ~~of the Solid Waste Act]~~ 74-9-22 NMSA 1978 and to any person who
9 makes a written request to the director for notice regarding a
10 specific application. [~~Except as otherwise provided in this~~
11 ~~section, hearings shall be conducted in accordance with the~~
12 ~~provisions of Section 29 of the Solid Waste Act.~~]

13 C. Within sixty days of the director's
14 determination that a permit application for a small solid waste
15 facility is complete, the director shall determine if there is
16 significant public interest to justify a public hearing. If
17 such interest exists, the director shall set a date, time and
18 location for a hearing on the application and give notice of
19 the hearing date, time and location and a brief description of
20 the application in the same manner as required in Section
21 74-9-22 NMSA 1978 and to any person who makes a written request
22 to the director for a notice regarding a specific application.

23 D. Except as otherwise provided in this section,
24 hearings shall be conducted in accordance with the provisions
25 of Section 74-9-29 NMSA 1978."

1 Section 5. Section 74-9-24 NMSA 1978 (being Laws 1990,
2 Chapter 99, Section 24, as amended) is amended to read:

3 "74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND
4 DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING
5 REQUIREMENT.--

6 A. The director, within one hundred eighty days
7 after the application is deemed complete and after [~~a~~] any
8 public hearing, shall issue a permit, issue a permit with terms
9 and conditions or deny a permit application. The director may
10 deny a permit application on the basis of information in the
11 application or evidence presented at the hearing, or both, if
12 he makes a finding that granting the permit would be
13 contradictory to or in violation of the Solid Waste Act or any
14 regulation adopted [~~under it~~] pursuant to the provisions of
15 that act. He may also deny a permit application if the
16 applicant fails to meet the financial responsibility
17 requirements established by the board [~~under~~] pursuant to the
18 provisions of Subsection A of Section 74-9-8 NMSA 1978 and
19 Section 74-9-35 NMSA 1978.

20 B. The director may deny any permit application or
21 revoke a permit if he has reasonable cause to believe that any
22 person required to be listed on the application pursuant to
23 Section 74-9-20 NMSA 1978 has:

24 (1) knowingly misrepresented a material fact
25 in application for a permit;

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1 (2) refused to disclose or failed to disclose
2 the information required [~~under~~] pursuant to the provisions of
3 Section 74-9-21 NMSA 1978;

4 (3) been convicted of a felony or other crime
5 involving moral turpitude within ten years immediately
6 preceding the date of the submission of the permit application;

7 (4) been convicted of a felony, within ten
8 years immediately preceding the date of the submission of the
9 permit application, in any court for any crime defined by state
10 or federal statutes as involving or being restraint of trade,
11 price-fixing, bribery or fraud;

12 (5) exhibited a history of willful disregard
13 for environmental laws of any state or the United States; or

14 (6) had any permit revoked or permanently
15 suspended for cause under the environmental laws of any state
16 or the United States.

17 C. In making a finding under Subsection B of this
18 section, the director may consider aggravating and mitigating
19 factors presented by any party at the hearing.

20 D. If an applicant whose permit is being considered
21 for denial or revocation on any basis provided in this section
22 has submitted an affirmative action plan that has been approved
23 in writing by the director and plan approval includes a period
24 of operation under a conditional permit or license that will
25 allow the applicant a reasonable opportunity to affirmatively

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1 demonstrate its rehabilitation, the director may issue a
2 conditional license for a reasonable period of time of
3 operation. In approving an affirmative action plan intended to
4 affirmatively demonstrate rehabilitation, the director may
5 consider the following factors: implementation by the
6 applicant of formal policies; training programs and management
7 control to minimize and prevent the occurrence of future
8 violations; installation by the applicant of internal
9 environmental auditing programs; the discharge of individuals
10 convicted of any crimes set forth in Subsection B of this
11 section; and such other factors as the director may deem
12 relevant.

13 E. Within sixty days of the date of the closing of
14 ~~[the]~~ any hearing on a permit application, the director shall
15 notify the applicant by certified mail of the issuance, denial
16 or issuance with conditions of a permit and the reasons
17 therefor. Any person who has made a written request to the
18 director to be notified of the action taken on the application
19 shall be given written notice of the director's action.

20 F. No permit for the operation of a solid waste
21 facility shall be valid until the permit or a notice of the
22 permit and a legal description of the property on which the
23 facility is located are filed and recorded in the office of the
24 county clerk in each county in which the facility is located.

25 G. Except as otherwise provided by law:

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1 (1) each permit issued for a publicly owned
2 and publicly operated new or repermited existing landfill,
3 transfer station, recycling facility or composting facility
4 shall remain in effect throughout the active life of the
5 landfill, transfer station, recycling facility or composting
6 facility as described in the approved permit or for twenty
7 years, whichever is less. Each permit issued for a publicly
8 owned landfill, transfer station, recycling facility or
9 composting facility that is privately operated pursuant to a
10 contract of no more than four years duration entered into in
11 accordance with the state or local procurement code shall
12 remain in effect throughout the active life of the landfill,
13 transfer station, recycling facility or composting facility as
14 described in the approved permit or for twenty years, whichever
15 is less. Each time the contract is renewed, the director shall
16 review the contract to determine whether the term of the permit
17 shall be governed by this paragraph or Paragraph (2) of this
18 ~~[section]~~ subsection. Each permit shall be reviewed by the
19 department of environment at least once every ten years. The
20 review shall address the operation, compliance history,
21 financial assurance and technical requirements for the
22 landfill, transfer station, recycling facility or composting
23 facility. At the time of the review there shall be public
24 notice in the manner prescribed by Section 74-9-22 NMSA 1978.
25 If the secretary of environment determines that there is

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1 significant public interest, a nonadjudicatory hearing shall be
2 held as part of the review. The secretary may require
3 appropriate modifications of the permit, including
4 modifications necessary to make the permit terms and conditions
5 consistent with statutes, regulations or judicial decisions;

6 (2) each permit issued for a privately owned
7 new or repermited existing landfill, transfer station,
8 recycling facility or composting facility shall remain in
9 effect for ten years or for the active life of the facility,
10 whichever is less. Each permit issued for a publicly owned
11 landfill, transfer station, recycling facility or composting
12 facility that is leased to a private person or that is operated
13 by a private person pursuant to a contract of more than four
14 years duration shall remain in effect for ten years or for the
15 active life of the landfill or facility, whichever is less.

16 Each permit shall be reviewed at least every five years by the
17 department of environment. Interested parties may petition the
18 department for review, in addition to the five-year review,
19 provided that the director shall have discretion to determine
20 whether there is good cause for such an additional review. The
21 review shall address the operation, compliance history,
22 financial assurance and technical requirements for the
23 landfill, transfer station, recycling facility or composting
24 facility. At the time of the review there shall be public
25 notice in the manner prescribed by Section 74-9-22 NMSA 1978.

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1 If the secretary of environment determines that there is
2 significant public interest, a nonadjudicatory hearing shall be
3 held as part of the review. The secretary may require
4 appropriate modifications of the permit, including
5 modifications necessary to make the permit terms and conditions
6 consistent with statutes, regulations or judicial decisions;
7 and

8 (3) the term of permits for facilities not
9 specified by this subsection shall be governed by existing or
10 amended regulations adopted by the board.

11 H. The director shall issue separate special waste
12 permits for all solid waste facilities that transfer, process,
13 transform, recycle or dispose of special waste pursuant to
14 regulations adopted by the board.

15 I. The registrations of small solid waste
16 facilities and closure and post-closure care plans that have
17 been issued by the department prior to July 1, 2005 shall
18 remain in effect as permits for those facilities until they are
19 expired, suspended, revoked or otherwise modified. Renewal
20 periods for permits for small solid waste facilities registered
21 prior to July 1, 2005 and for landfills closed pursuant to
22 closure and post-closure plans issued prior to July 1, 2005
23 shall commence on July 1, 2005."

24 Section 6. Section 74-9-28 NMSA 1978 (being Laws 1990,
25 Chapter 99, Section 28) is amended to read:

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1 "74-9-28. PRIOR HEARING REQUIREMENT FOR ~~[ALL]~~
2 ADJUDICATORY ACTIONS.--

3 A. The following adjudicatory actions by the
4 division are subject to prior hearing in accordance with the
5 requirements of Section ~~[29 of the Solid Waste Act]~~ 74-9-29
6 NMSA 1978, in addition to any specific hearing requirements and
7 procedures under other provisions of that act:

8 (1) issuance, ~~[refusal to issue or modify]~~
9 denial, modification and revocation of permits for large solid
10 waste facilities;

11 (2) issuance, denial, modification and
12 revocation of permits for small solid waste facilities and for
13 landfills that are no longer accepting waste and will close
14 rather than continue to operate if the director determines
15 there is significant public interest for a hearing;

16 ~~[(2)]~~ (3) administrative enforcement actions;
17 and

18 ~~[(3)]~~ (4) actions on requests for variances
19 and exemptions.

20 B. In any adjudicatory hearing, the director has
21 and may delegate to the hearing officer the power to issue
22 subpoenas for the attendance and testimony of witnesses and the
23 production of relevant documentary evidence. The subpoenas may
24 be enforced by action brought in the district court for the
25 county in which the hearing is held."

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